

COUNCIL ACTION FORM

SUBJECT: **REZONING WITH MASTER PLAN FOR PROPERTY AT 601 STATE AVENUE**

BACKGROUND:

The City Council held a public hearing on August 12, 2014 for the requested rezoning with Master Plan for the property located at 601 State Avenue and continued the public hearing until its August 26th meeting to allow for the applicant and City staff to verify project information and formulate a Zoning Agreement. This report is an addendum to the Council Action Form prepared for the August 12th Council meeting.

The request by the developer is for rezoning of a 29 acre site to approximately 1.63 acres north of College Creek from "S-GA" (Government/Airport) to "RL" Residential Low Density, and rezoning of approximately 27.37 acres of land south of College Creek, from "S-GA" (Government/Airport) to "FS-RL" (Floating Suburban Residential Low Density). The Council made a motion directing staff to prepare a Contract Rezoning Agreement signed by the developer that incorporated the following three issues:

- a. Master Plan to include an allowance for relocation of the bike path and easement subject to the approval by the City at the time of subdivision,
- b. Density of development limited to a developable area of approximately 10-14 acres based on Code-allowed exceptions for constrained areas and with the bike path in its current location, and
- c. Off-Site Traffic Improvements with an agreement that the City and developer agree to a proportional share of the cost of traffic improvements at the intersection of Mortensen Road and State Avenue.

Since the City Council hearing, City staff met with the developer and his representatives to discuss the direction of the Council. The meeting provided a further understanding of the applicant's proposed Master Plan dated August 11, 2014 and proposed development intensity and building types.

Without a clear understanding of the potential impacts of the new storm water requirements at the time of subdivision for the site, the developer noted concerns for limiting the development area shown in pink on the Master Plan beyond the limitation of the flood plain. The area may be needed to accommodate the new stormwater regulations in addition the area for building construction. He also discussed the issue of identifying a net acreage for the property at this Master Plan stage as the site layout has not yet been determined, including storm water controls, and will not be completed until the time of subdivision for the property.

The applicant did note during the discussion an agreement for the potential relocation of the bike path as indicated on the submitted Master Plan, which location will ultimately

be determined at the time of subdivision, and an agreement for payment of a proportional share of a signalized traffic improvements at the intersection of Mortensen Road and State Avenue. The applicant did not support paying for the proportional cost of a potential roundabout improvement rather than signalization of the intersection due to higher cost and that signalization of the intersection would mitigate the project's impacts on intersection operations.

Since meeting with the developer, a letter has been submitted to staff from Brian Torresi, dated August 18, 2014 (attached), which clarifies project details and confirms agreements. They agree to relocation of the bike path subject to joint agreement of the location and design by the City and developer at the time of subdivision. This will also require approval of the school district for the realignment on the portion of the property owned by the district. The letter also denotes the developer's agreement to payment toward a signalized traffic improvement for the intersection of Mortensen Road and State Avenue.

The key element of the letter identifies that while it is still unknown at this time what the precise net acreage will be for the property, it does indicate inferred acreages of developable area of 15-17 acres intended for building development based upon assumption of maximum density of 10 units per net acre. Mr. Torresi notes in the letter that these would be considered maximums of net acres and that a final determination of net acres and corresponding units would occur at the time of subdivision.

With the August 18, 2014 letter, the developer agrees to a stated specific maximum development limits in terms of both units and bedrooms with the understanding that the precise calculation of net acres and corresponding maximum development levels are to be determined at the time of a proposed subdivision. The developer agrees to a maximum 172 units for the entire site, regardless of zoning classification; units are to be configured as two and three bedroom units; and in no event will the number of bedrooms for the entire site exceed 450 bedrooms for the south parcel.

In regards to Council direction to prepare an agreement, a Contract Rezoning Agreement including the above development terms and a Master Plan Zoning Agreement for implementing the Master Plan are included with this report. If the Council approves the first reading of the rezoning ordinance with the Master Plan Zoning Agreement, a final Master Plan graphic will be included reflecting the terms spelled out in the agreement for final approval of the City prior to a third reading of the rezoning ordinance. In regards to the Contract Rezoning Agreement, staff would suggest no action be taken, until the third reading of the rezoning ordinance. This will allow for staff to complete and insert the cost estimate for off-site traffic improvements into Section III.

Staff notes that if the property is rezoned as requested, that the site requires subdivision review and approval by the City Council prior to initiating development of homes. To develop the site in conformance with the proposed contract rezone and Master Plan, the single-family attached residential building type proposed will require the developer to complete a preliminary plat for a major subdivision and a final plat for the property

before development of any of the proposed residential units. Council will have the opportunity to review the subdivision plan in accordance with the standards and approval criteria of the subdivision ordinance as follows:

- (a) safe and convenient pedestrian and vehicular access to the subdivision;
- (b) appropriate preservation and integration of natural features within the subdivision;
- (c) the capacity and capability of infrastructure facilities, utility service and community facility service; and
- (d) minimizing overall lengths of public ways and infrastructure facilities while limiting the use of dead-end streets and cul-de-sacs.

The plat will also be required to conform to relevant and applicable design and improvement standards in the subdivision regulations and to other City ordinances and standards. In particular, the City Council shall determine whether the subdivision conforms to minimum levels of service standards set forth in the Land Use Policy Plan for public infrastructure and shall give due consideration to the possible burden of the proposed subdivision on public improvements in determining whether to require the installation of additional public improvements as a condition for approval. Elements of the design standards of the Subdivision Code which will also be reviewed are such items as, lot and block layout; street type, location, and layout; lot conformance with natural features; sidewalk and bike path locations and safety; landscape requirements such as street trees; public infrastructure improvements for water and sewer, as well as storm water control; and improvement agreements needed for the installation or completion of the public improvements on the property.

Because the Master Plan identifies an attached single-family home type for the FS-RL portion of the property, once a Final Plat has been approved by the Council and recorded for the property to create the new lots, minor site plan review will be required for each property to review for compliance with the zone development standards (Article 12, FS Zoning) and the general development standards (Article 4) of the zoning code before subsequent building permits can be issued for any of the proposed units. This review is an administrative review by staff.

ALTERNATIVES:

1. The City Council can approve the first reading of an ordinance for rezoning of approximately 1.63 acres north of College Creek from “S-GA” (Government/Airport) to “RL” Residential Low Density, and rezoning of approximately 27.37 acres of land south of College Creek, from “S-GA” (Government/Airport) to “FS-RL” (Floating Suburban Residential Low Density), all located at 601 State Avenue.

Since the Master Plan Zoning Agreement needs an updated graphic and the Contract Rezoning Agreement needs a final cost sharing estimate for the traffic improvements at the Mortenson Road and State Avenue intersection, staff recommends that these two agreements be completed and signed by the developer prior to the third reading of the rezoning ordinance.

This is the Applicant's requested zoning change with the submitted Master Plan and agreed upon contract for the conditions of the rezoning:

- 1) Limiting development to a maximum of 172 units and 450 beds, whichever is less.**
 - 2) Allowance for relocation of the bike path at the sole expense of the developer and upon mutual agreement with the City on a new location.**
 - 3) Agreement to pay a proportional share of signalization improvements of Mortenson and State intersection prior occupancy of the first home on the site.**
2. The City Council can deny the request for rezoning of approximately 29 acres of land located at 601 State Avenue from "S-GA" (Government/Airport) to "RL" (Residential Low Density) and "FS-RL" (Floating Suburban Residential Low Density).

This is the recommendation from the Planning and Zoning Commission. Under this alternative, the developer would not be able to file the same zoning application for one year.

3. Action on this request can be postponed and referred back to staff and the applicant for specified information.

MANAGER'S RECOMMENDED ACTION:

The proposed zoning change to FS-RL and a portion of the site as R-L is consistent with the Land Use Policy Plan designation of Village/Suburban Residential and Low Density Residential. Within the applicable base zoning districts, the master plan described by the developer includes an estimated 21 acres as developable area of the site overall, including areas for site improvements and stormwater treatment, but limits the density of the development to a total of 172 units with a maximum of 450 bedrooms, which assumes a net acreage of 15-17 acres for the property based on mix of 2 and 3 bedroom units and the maximum density for the FS-RL zone at 10 units per net acre.

Staff finds the applicant's statements of inferred net acres and overall developable area to be consistent with Council's motion to limit developable area to 14 acres before accounting for moving the bike path as allowed in an earlier part of the motion. The estimated range of 15-17 net developable acres assumes the bike path has been mutually agreed upon to be moved. The discussion with the applicant explains more clearly that within the 19.93 acres of "pink" FS-RL developable area that it is intended to allow for stormwater improvements as well as for building locations in a more limited area than the extent shown on the Master Plan. However, final determination on design and layout will occur at the time of subdivision review.

Staff notes that, based on the subsequent subdivision review, the area of development may be reduced when applying the standards of the Subdivision Code and specifics of the FS zoning standards. This could have a corresponding reduction in the total number of units and beds based on final designed layout of lots and storm water management controls required for the property. The applicant affirmatively states their understanding

of subdivision requirements and the precise calculation of net acres for the site may deviate from their estimate.

Staff also notes that with approval of the master plan, the potential rerouting of the shared use path is conceptual at this stage and is still subject to City Council agreement and approval with a subsequent subdivision. Public Works and Parks and Recreation staff are generally accepting of the design with certain specifications. The most significant is that the applicant would need to work with Iowa State University to move the State Avenue crossing further north to match the rerouted path, rather than circulate people north and south along State Avenue to the existing crossing. The new configuration of the path will also require approval and granting of an easement by the School District for the realignment of the path indicated on the Middle School property.

On August 12th, staff had previously recommended that Council defer action on the rezoning request to allow the applicant to clarify issues with the building types, net acres of development, and area of development as required components of a Master Plan. Additionally, the applicant had not formally committed to contributing to off-site traffic impacts for Mortenson and State intersection. Based on the information provided by the developer since August 12th, staff has concluded that the proposed rezoning and master plan as described by the applicant can be found to be consistent with the rezoning and master plan requirements of the Chapter 29 of the Municipal Code. FS-RL is a zoning district that is consistent with the underlying land use designation of the site.

Therefore, it is the recommendation of the City Manager that the City Council accept Alternative #1, thereby approving the first reading of an ordinance for rezoning of approximately 1.63 acres north of College Creek from “S-GA” (Government/Airport) to “RL” Residential Low Density, and rezoning of approximately 27.37 acres of land south of College Creek, from “S-GA” (Government/Airport) to “FS-RL” (Floating Suburban Residential Low Density), all located at 601 State Avenue.

Since the Master Plan Zoning Agreement needs an updated graphic and the Contract Rezoning Agreement needs a final cost sharing estimate for the traffic improvements at the Mortenson Road and State Avenue intersection, staff is also recommending that these two agreements be completed and signed by the developer prior to the third reading of the rezoning ordinance.

Council should remember that a protest of the zone change application signed by 17 property owners representing 19 of the 31 properties within 200 feet of the subject site has been submitted to the City. As a result of this protest, action to rezone the site to any zoning district except RL (Low Density Residential) will require five affirmative votes by the City Council.

DO NOT WRITE IN THE SPACE ABOVE THIS LINE; RESERVED FOR RECORDER

Prepared by: Judy K. Parks, Ames City Attorney, 515 Clark Ave., Ames, IA 50010; 515-239-5146

Return to: Ames City Clerk, Ames City Hall, P.O. Box 811, Ames, IA 50010

**CONTRACT REZONING AGREEMENT BETWEEN BRECKENRIDGE GROUP
AMES IOWA LLC AND THE CITY OF AMES PERTAINING TO THE
LAND AT 601 STATE AVENUE**

THIS AGREEMENT, made and entered into this ____ day of _____, 2014, by and between the City of Ames, Iowa (hereinafter called “City”) and Breckenridge Group Ames Iowa LLC (hereinafter called “Developer”), their successors and assigns.

WITNESSETH THAT:

WHEREAS, the parties hereto desire the improvement and development of an area legally described as set out on Attachment A and depicted in Attachment B (collectively, the “Parcel”); and

WHEREAS, Developer has applied to the City for rezoning of the Parcel from its present designation as S-GA (Government/Airport) to FS-RL (Floating Suburban Residential Low Density) and RL (Residential Low Density), consistent with the Land Use Policy Plan; and

WHEREAS, an agreement between the Developer and the City related to the Parcel is jointly sought with respect to certain conditions being agreed upon in addition to granting the base zoning, as provided for under Iowa Code section 414.5.

NOW, THEREFORE, the parties hereto have agreed and do agree as follows:

**I.
INTENT AND PURPOSE**

A. It is the intent of this Agreement to:

1. Recognize that the Developer is owner of the Parcel which is being rezoned but expressly agrees to the imposition of additional conditions as authorized pursuant to Iowa Code Section 414.5.

2. Provide for a certain maximum density of development on the Parcel.
3. Provide for proportional cost sharing of off-site traffic improvements required for the development which is contemplated to occur on this Parcel.
4. Allow for relocation of the bike path across the Parcel.

II. DENSITY OF DEVELOPMENT OF PARCEL

With regard to the Density of development of this parcel, the calculations to determine with precision how many acres will be developed and to what level those will be developed depend on factors that become known only as a result of the subdivision and site layout steps that occur after the parcel is rezoned. Since those steps have not occurred, the precise amount of developable area is not yet known and a maximum range is being estimated. In order to provide a limit to the density of development prior to site layout stage, the Developer agrees that it will limit the entire development of the property to no more than 172 units, a mix of two and three bedroom units, and a maximum of four hundred fifty (450) bedrooms. The Parties recognize that these are maximum limits and acknowledge that upon completion of the final design steps, the actual bedroom count may be fewer in accordance with the requirements of the City of Ames Municipal Code.

III. OFF-SITE TRAFFIC IMPROVEMENT COSTS

A. Off-Site Traffic Improvement Costs. With regard to off-site improvements, the Developer agrees that it shall pay its proportionate cost for improvements to the intersection of Mortensen Road and State Avenue, to include roadway and other infrastructure improvements at that intersection, as needed to safely absorb the additional pedestrian and vehicular traffic generated by the development contemplated on this site. For the contemplated improvements of that intersection, the Developer's estimated proposed share would be \$_____ to be paid to the City prior to receiving the first certificate of occupancy for a unit on the site. Upon payment of the cost to the City the developer has no further mitigation responsibility in regards to Mortenson Road and State Avenue intersection for development of the site. The City has no obligation to complete said improvements upon payment of the proportional cost and the City may spend the funds for other transportation related improvements.

B. Non-Inclusion of Other Improvement Obligations. The parties acknowledge and agree that this Agreement is being executed in contemplation of a conceptual plan for development, without further review or approval of subsequent specific plans for development of the Parcel. The parties acknowledge and agree that it is not possible to anticipate all the infrastructure requirements that the Developer may be required to complete to properly develop the site. Therefore, the parties agree that all work done by and on behalf of the Developer with respect to, but not limited to, landscaping, sidewalks, bike paths, building design, building construction and utilities, both on-site and off-site, shall be made in compliance with Iowa Code, SUDAS and all other federal, state and local laws and policies of general application, including

but not limited to subdivision and zoning codes, whether or not such requirements are specifically stated in this Agreement.

IV. BIKE PATH RELOCATION

A. Bike Path. The parties agree that the bike path through this parcel may be relocated to another location, which shall be mutually agreed upon, to minimize the amount of development-related traffic that crosses the bike path. It is understood relocation of the bike path shall be to City specifications and at the sole expense of the Developer. It is further understood that relocation may require the Developer to take additional measures at its sole expense, including securing permission from third parties, to relocate portions of the path on property outside the boundaries of this parcel in order to insure connectivity of the path with other segments of the path.

V. GENERAL PROVISIONS

A. Modification. The parties agree that this Agreement may be modified, amended or supplemented only by written agreement of the parties.

B. General Applicability of Other Laws and Ordinances. The Developer understands and agrees that all work done by or on behalf of the Developer with respect to streets, sidewalks, shared use paths, building design and construction, and utilities (both on-site and off-site) shall be made in compliance with Iowa Code, the Ames Municipal Code, Iowa Statewide Urban Design and Specifications and all other federal, state and local laws of general application, whether or not such requirements are specifically stated in this agreement. All ordinances, regulations and policies of the City now existing, or as may hereafter be enacted, shall apply to activity or uses on the site.

C. Incorporation of Recitals and Exhibits. The recitals, together with any and all exhibits attached hereto, are confirmed by the parties as true and incorporated herein by reference as if fully set forth verbatim. The recitals and exhibits are a substantive contractual part of this agreement.

VI. COVENANTS RUN WITH THE LAND

This Agreement shall run with the site and shall be binding upon the Developer, its successors, subsequent purchasers and assigns. Each party hereto agrees to cooperate with the other in executing a Memorandum of Agreement that may be recorded in place of this document.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed effective as of the date first above written.

CITY OF AMES, IOWA

By _____
Ann H. Campbell, Mayor

Attest _____
Diane R. Voss, City Clerk

STATE OF IOWA, COUNTY OF STORY, ss:

On this _____ day of _____, 2014, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the _____ day of _____, 2014, and that Ann H. Campbell and Diane R Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa

BRECKENRIDGE GROUP AMES IOWA LLC

By _____
Greg Henry, CEO

STATE OF _____, COUNTY OF _____, ss:

This instrument was acknowledged before me on _____, 2014, by Greg Henry, of Breckenridge Group Ames Iowa LLC.

Notary Public in and for the State of _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF AMES, IOWA, AS PROVIDED FOR IN SECTION 29.301 OF THE *MUNICIPAL CODE* OF THE CITY OF AMES, IOWA, BY CHANGING THE BOUNDARIES OF THE DISTRICTS ESTABLISHED AND SHOWN ON SAID MAP AS PROVIDED IN SECTION 29.1507 OF THE *MUNICIPAL CODE* OF THE CITY OF AMES, IOWA; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH AND ESTABLISHING AN EFFECTIVE DATE

BE IT HEREBY ORDAINED by the City Council of the City of Ames, Iowa;

Section 1: The Official Zoning Map of the City of Ames, Iowa, as provided for in Section 29.301 of the *Municipal Code* of the City of Ames, Iowa, is amended by changing the boundaries of the districts established and shown on said Map in the manner authorized by Section 29.1507 of the *Municipal Code* of the City of Ames, Iowa, as follows: That the real estate, generally located at 601 State Avenue, is rezoned with a Master Plan from Special Government/Airport (S-GA) to Residential Low Density (RL) and Floating Suburban Residential Low Density (FS-RL).

Real Estate Description: North Tract: That part of Lot 2, Ames Middle School 2003, Plat 2 lying North of the centerline of an existing creek and being more particularly described as follows: Beginning at the Northeast Corner of said Lot 2; thence S00°48'56"E, 97.42 feet along the East line thereof to the approximate centerline of said creek; thence following said line S79°47'00"W, 67.81 feet; thence N61°44'50"W, 133.74 feet; thence S27°29'01"W, 217.58 feet; thence S62°33'38"W, 122.40 feet; thence S06°19'30"E, 90.87 feet; thence S74°57'15"W, 150.40 feet; thence S32°58'47"W, 79.43 feet; thence S89°05'41"W, 61.87 feet; thence S76°47'10"W, 218.20 feet; thence S63°12'57"W, 133.13 feet; thence S42°05'28"W, 125.26 feet; thence N89°34'38"W, 239.77 feet; thence N59°27'19"W, 195.77 feet to the West line of said Lot 2; thence N00°15'00"W, 123.82 feet to the Northwest Corner thereof; thence following the boundary of said Lot 2 S89°10'19"E, 210.71 feet; thence S89°14'16"E, 665.23 feet; thence N00°18'11"W, 125.01 feet; thence S89°22'29"E, 27.50 feet; thence N00°18'11"W, 342.83 feet; thence N88°29'30"E, 555.97 feet to the point of beginning, containing 242400.13 s.f.

South Tract:

That part of Lot 2, Ames Middle School 2003, Plat 2 lying South of the centerline of an existing creek and being more particularly described as follows: Commencing at the Northeast Corner of said Lot 2; thence S00°48'56"E, 97.42 feet along the East line thereof to the point of beginning; thence continuing S00°48'56"E, 396.10 feet; thence S06°31'20"E, 200.95 feet; thence S00°47'57"E, 300.01 feet; thence S06°33'03"E, 167.66 feet to the Southeast Corner of said Lot 2; thence N89°08'56"W, 1507.08 feet to the Southwest Corner thereof; thence N00°15'00"W, 543.21 feet along the West line thereof to the approximate centerline of said creek; thence following said line S59°27'19"E, 195.77 feet; thence S89°34'38"E, 239.77 feet; thence N42°05'28"E, 125.26 feet; thence N63°12'57"E, 133.13 feet; thence N76°47'10"E, 218.20 feet; thence N89°05'41"E, 61.87 feet; thence N32°58'47"E, 79.43 feet; thence N74°57'15"E, 150.40 feet; thence N06°19'30"W, 90.87 feet; thence N62°33'38"E, 122.40 feet; thence N27°29'01"E, 217.58 feet; thence S61°44'50"E, 133.74 feet; thence N79°47'00"E, 67.81 feet to the point of beginning, containing 1020749.98 s.f.

Section 2: All other ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: This ordinance is in full force and effect from and after its adoption and publication as provided by law.

ADOPTED THIS _____ day of _____, _____.

Diane R. Voss, City Clerk

Ann H. Campbell, Mayor

BRECKENRIDGE MASTER PLAN ZONING AGREEMENT

DO NOT WRITE IN THE SPACE ABOVE THIS LINE; RESERVED FOR RECORDER

Prepared by: Judy K.. Parks, Ames City Attorney, 515 Clark Ave., Ames, IA 50010; (515) 239-5146

Return to: Ames City Clerk, Ames City Hall, P.O. Box 811, Ames, IA 50010

AGREEMENT FOR ADOPTION OF THE MASTER PLAN FOR PROPERTY AT 601 STATE AVENUE

THIS AGREEMENT, made and entered into this ____ day of _____, 2014, by and between the City of Ames, Iowa (hereinafter called "City") and Breckenridge Group Ames Iowa LLC (hereinafter called "Developer"), its successors and assigns, both collectively being referred to as the "Parties,"

WITNESSETH THAT:

WHEREAS, the Parties hereto desire the improvement and development of land located at 601 State Avenue (hereinafter referred to as the "Site"); and

WHEREAS, the Site is designated on the Land Use Policy Plan as Village/Suburban Residential; and the Developer is seeking rezoning of the Site from SG-A – Government/Airport zoning to FS-RL - Suburban Low Density Residential for that portion of the parcel south of College Creek and RL (Low Density Residential) for that portion of the parcel north of College Creek, consistent with the LUPP designations; and

WHEREAS, the City Council resolved that a Master Plan accompany this rezoning, pursuant to Ames Municipal Code section 29.1507(3), and the Developer has submitted a Master Plan in conformance with the requirements set forth in Ames Municipal Code section 29.1507(4); and

WHEREAS, Ames Municipal Code section 29.1507(5) requires approval of a zoning agreement when a Master Plan is required and that all development of the Site comply with the Master Plan.

NOW, THEREFORE, the Parties hereto have agreed and do agree as follows:

**I.
601 STATE AVENUE MASTER PLAN ADOPTED**

The Master Plan set forth at Attachment A and incorporated by reference in this agreement shall be the Master Plan for 601 State Avenue.

**II.
NON-INCLUSION OF OTHER OBLIGATIONS**

The Parties acknowledge and agree that this Agreement is being executed to fulfill a specific requirement of section 29.1507(5) of the Ames Municipal Code. It is also understood that this Agreement supplements but does not replace or supersede any agreements made with the City or third parties as necessary to complete development.

The Parties understand that the Master Plan adopts a general conceptual plan for development, without review or approval of specific subdivision plats or site plans for development of the Site. The Parties therefore acknowledge that the Master Plan adoption does not anticipate or incorporate all the additional approvals or requirements that may be required to properly and completely develop the Site and does not relieve the developer of compliance with other provisions of the Ames Municipal Code, the Iowa Code, SUDAS, or other federal, state or local laws or regulations.

**III.
MODIFICATION OF AGREEMENT**

Any modifications or changes to the Master Plan shall be undertaken in accordance with the process provided for in Ames Municipal Code section 29.1507(5).

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed effective as of the date first above written.

CITY OF AMES, IOWA

By _____
Ann H. Campbell, Mayor

Attest _____
Diane R. Voss, City Clerk

STATE OF IOWA, COUNTY OF STORY, ss:

On this ____ day of _____, 2014, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; and that the instrument was signed and sealed on behalf of the corporation by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the ____ day of _____, 2014, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa

BRECKENRIDGE GROUP AMES IOWA
LLC

By _____
Greg Henry, CEO

STATE OF _____, COUNTY OF _____, ss:

This instrument was acknowledged before me on _____, 2014, by Greg Henry as _____ of Breckenridge Group Ames Iowa LLC.

Notary Public in and for the State of _____

August 18, 2014

City of Ames, Iowa
Department of Planning & Housing
Attn: Kelly Diekmann
515 Clark Ave.
Ames, IA 50010

Re: 601 State Avenue, Ames, Story County, Iowa (the "Property")

Kelly:

Thank you for taking the time to meet last Thursday related to the Master Plan for the Property and the related Rezoning Application Form. As directed by the Ames City Council (the "Council"), we discussed the following items in order to develop the framework for an agreeable and executed zoning agreement (the "Agreement") prior to the next Council meeting on August 26, 2014:

1. an allowance in the Master Plan for the relocation of the bike path (the "Bike Path Item");
2. an agreement by Breckenridge Group Ames Iowa, LLC ("Breckenridge") to share, proportionately, in the cost of off-site traffic improvements at the intersection of Mortensen Road and State Avenue (the "Shared Cost Item"); and
3. an agreement related to the net developable area of the Property as shown on the Master Plan (the "Developable Area Item").

With respect to the Bike Path Item, Breckenridge agrees, as Breckenridge has before, that the bike path should be relocated to minimize the amount of development-related motor vehicle traffic that crosses the bike path. Thus, the Agreement should contain language that indicates that the bike path shall be relocated to such location as may be mutually agreeable to Breckenridge, the Council, and the Ames Community School District (the "District"), the latter needing only to agree to relocate or realign, at Breckenridge's sole cost and expense, that portion of the bike path that extends onto the District's property west of the Property.

With respect to the Shared Cost Item, Breckenridge understands and agrees that, subject to the last two (2) sentences of this paragraph, Breckenridge will have to pay a proportionate share of the cost of off-site traffic improvements at the intersection of Mortensen Road and State

DAVIS BROWN KOEHN SHORS & ROBERTS P.C.

Avenue. Thus, the Agreement should contain language that indicates Breckenridge's willingness in this regard. It is our understanding that you will provide us with a cost estimate, and that the Agreement may require Breckenridge to provide some form of financial security to secure this obligation. We look forward to seeing the cost estimate. Notwithstanding anything herein to the contrary, the engineer for Breckenridge has determined that traffic at the intersection of Mortensen Road and State Avenue is adequately improved with proper traffic signalization at said intersection, and thus, Breckenridge will share in the cost of said traffic signalization. In the event the Council desires to construct alternate traffic improvements or devices, such as a roundabout, Breckenridge agrees to only pay a proportionate share of the cost related to traffic signalization, whether or not traffic signalization or a roundabout is implemented.

With respect to the Developable Area item, we discussed the fact that the Department of Planning and Housing (the "Department") has estimated that ten (10) to fourteen (14) acres of the Property are developable (the "Department's Density Calculation") and that the engineer for Breckenridge, as shown on the Master Plan, has estimated that over twenty-one (21) acres of the Property are developable ("Breckenridge's Density Calculation"). We note that the term "developable area" is not defined anywhere in the Ames Municipal Code (the "Code").

There were quite a few incorrect assumptions made by the Department and/or Council at the last Council meeting, such as:

- a. Based on Breckenridge's Density Calculation, Breckenridge intends to "develop" the Property in sensitive areas, within buffers, on steep slopes, etc. That assumption is not accurate. As stated by Breckenridge's engineer, the developable area on the Master Plan identifies a larger area than where structures and other improvements will actually be located in order to account for the use or designation of certain areas to address development-related constraints or engineering needs such as stormwater detention and mitigation and related items. Breckenridge is well aware of the fact that the Property contains many constraints, most of which will be addressed and/or identified in processes that will occur after the rezoning of the Property. Breckenridge's primary concern is, if the developable area on the Master Plan is decreased, that said area will be further decreased as this development moves forward to subsequent phases of development based on the constraints and unique engineering needs related to the Property. In other words, Breckenridge is showing most of the Property as "developable" because those areas might need to be utilized in some manner other than actual construction of improvements.
- b. Based on the Master Plan identifying a range of developable units from one hundred (100) to one hundred seventy-two (172), Breckenridge will surely develop the higher limit and approval of the Master Plan is an approval of development at that higher limit. Those assumptions are not accurate. As you are aware, the Master Plan is supposed to provide a range of development, not a specific number of units. Breckenridge's development of the Property and

the Master Plan are compliant with the Code and consistent with each other as long as the final number of units is within the range identified on the Master Plan. Approval of the Master Plan is an approval of the range, not an approval for Breckenridge to actually hit that higher limit.

- c. Based on Breckenridge's desire to develop one hundred seventy two (172) units (see above) and the perceived desire to maximize bedroom count, all of the units on the Property will be units that contain three (3) bedrooms, resulting in, potentially, five hundred sixteen (516) bedrooms on the Property. That assumption is not accurate. As stated many times before, Breckenridge must have variation in their product offerings, and thus the units will be a mix of units that contain two (2) bedrooms or three (3) bedrooms.
- d. Developable area and net acres are calculated in the same manner and used synonymously. That assumption is incorrect. As noted above, the engineer for Breckenridge believes that most of the Property should be designated as developable area, but the Department's report seems to blur the distinction between developable area and net acres. The Department's Density Calculation refers to net acreage, and Breckenridge's Density Calculation refers to developable area. The actual determination of net acreage, although loosely referenced in the Master Plan related to types of units on the Property, will be addressed in processes that will occur after the rezoning of the Property and not through the Master Plan process which, by Code, is general in nature.
- e. Breckenridge's desire to develop one hundred seventy-two (172) units (see above), viewed in conjunction with the current maximum density in FS-RL zones of ten (10) units per acre, identifies that Breckenridge has calculated the net acres of the Property at seventeen and two-tenths (17.2) of an acre – approximately four (4) acres higher than the Department. That assumption is incorrect. As noted above, the numbers on the Master Plan merely identify a general range of unit development, as required by the Code, and the actual number of units, as well as actual net acreage, is determined in processes that will occur after the rezoning of the Property.

In consideration of the aforementioned assumptions, the confusion that arises from them, and the overall complexity of this matter, Breckenridge would agree, as part of the Agreement, to limit the entire development of the Property to a maximum of four hundred fifty (450) bedrooms, which necessarily infers a net acreage of fifteen (15) – one (1) acre higher than the Department's Density Calculation – taking into account the three (3) bedroom assumption noted above, despite its inaccuracy. Again, language to this effect in the Agreement or on the Master Plan does not commit the Council to guarantee that four hundred fifty (450) bedrooms will be developed on the Property, only that the maximum number of bedrooms could be four hundred fifty (450). Given the complexities, inconsistency, and potential disagreement related to the undefined

August 18, 2014

Page 4

“developable area” term and the belief that net acreage is more appropriately determined at a later time, agreeing to bedroom count seems to be the most prudent way to move this forward.

In sum, the Agreement should provide: (1) that the bike path shall be relocated to a location that is mutually agreeable to the Council, Breckenridge, and the District; (2) that Breckenridge agrees to pay a proportionate share of traffic improvements at the intersection of Mortensen Road and State Avenue and to secure the payment of same through an instrument acceptable to the Council; and (3) that the maximum number of bedrooms to be developed on the Property is four hundred fifty (450).

Please let me know if you have any questions related to the subject matter herein and if this correspondence contains any inaccurate information.

Very truly yours,

DAVIS, BROWN, KOEHN, SHORS & ROBERTS, P.C.

A handwritten signature in blue ink, appearing to read 'Brian D. Torresi', with a stylized, flowing script.

Brian D. Torresi

Cc: Charlie Vatterott
Scott Renaud
Judy Parks